

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:25-cv-20010-PCH

MARIO MIRABAL,

Appellant,

v.

**DEUTSCHE BANK NATIONAL
TRUST COMPANY,**

Appellee.

ORDER

THIS CAUSE is before the Court upon Appellant’s, Mario Mirabal, appeal from the U.S. Bankruptcy Court of the Southern District of Florida (“Bankruptcy Court”), [ECF No. 7] (“Appeal” or “App. Brief”), filed on February 27, 2025. Appellee, Deutsche Bank National Trust Company, filed its Response in Opposition [ECF No. 13] (“Response”), to which Appellant filed his Reply [ECF No. 14] (“Reply”). The issue on appeal is whether the Appellant has standing to contest the validity of an assignment to which he is not a party.

The Court has carefully considered the Record [ECF No. 5] (“Record”), the parties’ written submissions, and the applicable law. For the reasons explained herein, the Bankruptcy Court’s Order [R:150-152] (“Order”) is **AFFIRMED**.

BACKGROUND

This appeal is a byproduct of a series of actions in State court, as well as the Bankruptcy Court in the Southern District of Florida. The relevant facts for the purposes of this appeal are as follows. On or about January 12, 2007, Borrower Ariana Birenchwajg executed a Note in favor of IndyMac Bank, F.S.B. which was secured by a mortgage in favor of IndyBank, F.S.B.,

encumbering the at-issue property in Miami Beach, Florida. [R:71]. The Loan documents were later assigned to Appellee. [R:26]. Appellee subsequently commenced a foreclosure action as all payments on the Note had ceased, naming both Birencwajg and Appellant—Appellant as titleholder to the property following Birencwajg’s execution of a quit claim deed. [R:71]. On April 5, 2023, the Eleventh Judicial Circuit issued a final judgment of \$1,179,057.78, plus statutory interest. [R:71]. The same day, Appellee filed a Chapter 13 Bankruptcy Petition, resulting in the State court’s vacatur of the final judgment. [R:72]. After multiple procedural decisions in the State court, Appellee commenced the underlying Bankruptcy Court action, Adv. No. 24-01418-CLC (“Adversary Proceeding”). [R:17-24]. The Complaint filed in the Adversary Proceeding asked the Bankruptcy Court to determine if Appellee had standing to foreclose the mortgage in State court and challenged the validity of the mortgage assignment from Indy Bank, F.S.B. to Appellee. *See generally* [R:17-R:24]. On November 21, 2024, Appellee filed a Motion to Dismiss, arguing primarily that Appellant lacked standing to challenge the mortgage assignment. *See generally* [R:70-84]. On December 23, 2025, the Bankruptcy Court granted Appellee’s motion to dismiss, finding that Appellant did not have standing. [R:150-152]. Appellant now appeals the dismissal of his Adversary Proceeding.

STANDARD OF REVIEW

“District courts have jurisdiction to hear timely appeals of final judgments of bankruptcy judges.” *Dean St. Brooklyn LLC (DE) v. U.S. Bank Nat’l Ass’n*, No. 23-CV-22189, 2024 WL 620935, at *3 (S.D. Fla. Feb. 14, 2024). “The district court in a bankruptcy appeal, like this Court itself, functions as an appellate court in reviewing the bankruptcy court’s decision.” *In re Sublett*, 895 F.2d 1381, 1383–84 (11th Cir. 1990) (citing 28 U.S.C.A. § 158(a), (c)). “On appeal, the District Court reviews a bankruptcy court’s legal rulings *de novo* and its findings of fact for clear

error.” *Thompson v. Y & M 18, LLC*, No. 18-CV-62124, 2019 WL 8810363, at *3 (S.D. Fla. Sept. 9, 2019).

DISCUSSION

Appellant argues that the Bankruptcy Court erred in dismissing his Adversary Proceeding complaint for three reasons. First, Appellant argues that the Bankruptcy Court “disregarded material evidence proving that Deutsche Bank lacked legal standing to foreclose” on his home, because “the assignment of the mortgage was legally void.” App. Brief at 4. Second, Appellant argues that the “record in state court and bankruptcy court presents a blatant contradiction,” requiring judicial intervention. App. Brief at 5. Third, Appellant argues that the Bankruptcy Court “erred in ruling that Appellant lacked standing to challenge the assignment.” App. Brief at 7.

The Bankruptcy Court dismissed the complaint solely based on lack of standing, and did not address any of Appellant’s miscellaneous arguments. [R:150-152]. Thus, the Court’s review is limited to Appellant’s third argument: whether the Bankruptcy Court erred in dismissing the adversary complaint based on Appellant’s lack of standing. *See, e.g., Griggs v. Kenworth of Montgomery, Inc.*, 775 F. App’x 608, 613 (11th Cir. 2019) (“And, although the parties invite us to analyze their factual and legal disputes for the first time on appeal, we are a court of review, and we ordinarily ‘do not decide in the first instance issues not decided below.’” (quoting *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012))); *Furr v. TD Bank, N.A.*, 587 B.R. 743, 749 (S.D. Fla. 2018) (“This issue was not addressed by the bankruptcy court and the Court will not consider an issue not decided below.”).

After conducting a *de novo* review of the Record and the Bankruptcy Court’s Order, the Court concurs with the Bankruptcy Court’s legal conclusions. Appellant is neither a party to the assignment of the at-issue mortgage, nor a third-party beneficiary. An individual “do[es] not have standing to raise a challenge to the validity of an assignment” if they “are not parties to the

Assignment.” *Altier v. Fed. Nat. Mortg. Ass’n*, No. 1:13-CV-164-MW/GRJ, 2013 WL 6388521, at *3 (N.D. Fla. Dec. 6, 2013); *see also Rhodes v. JPMorgan Chase Bank, N.A.*, No. 12-80368-CIV, 2012 WL 5411062, at *4 (S.D. Fla. Nov. 6, 2012) (explaining that “[w]ith respect to a challenge to either the validity of mortgage’s assignment or transfer . . . Plaintiff has no standing to raise this argument”); *Howell v. PHH Mortg. Corp.*, No. 6:15-CV-883-ORL-TBS, 2015 WL 5829673, at *3 (M.D. Fla. Oct. 1, 2015) (“Plaintiffs do not have standing to raise a challenge to the validity of the assignments because Plaintiffs were not parties to those transfers.”); *Coursen v. JP Morgan Chase & Co.*, No. 8:12-CV-690-T-26EAJ, 2013 WL 5437341, at *11 (M.D. Fla. Sept. 27, 2013), *aff’d sub nom. Coursen v. Shapiro & Fishman, GP*, 588 F. App’x 882 (11th Cir. 2014) (“But, nevertheless, under Florida law Coursen as a non-party to the assignment lacks standing to contest it[.]”).

Appellant posits that he has standing because he “held legal title to the property” and “had a Power of Attorney for the original borrower.” App. Brief at 7. Appellant raised this argument in the Adversary Proceeding below [R:94-95]. But Appellant misses the point. Appellant cites multiple cases which allegedly stand for the proposition that “[c]ourts have recognized the rights of individuals holding title or acting under power of attorney to challenge improper or fraudulent assignments.” Response at 24. The Court’s further review reveals that those cases are inapposite, and do not support Appellant’s position. *See Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998) (dismissal of legal malpractice claim upheld on appeal based on plaintiff’s conduct in the litigation); *Smith v. Bank of Am., N.A.*, No. 2:11-CV-676-FTM-29, 2014 WL 897032, at *3 (M.D. Fla. Mar. 6, 2014) (denying motion for final dismissal or spoliation sanctions and partially granting defendant’s motion for summary judgment); *Rodriguez v. Wells Fargo Bank, N.A.*, 178 So. 3d 62, 64 (Fla. 4th DCA 2015) (reversal and remand warranted when the “bank . . . failed to prove that it

had standing as the holder of the note”). The Court could not locate *Fairbank v. J.P. Morgan Chase Bank, N.A.*, 283 So. 3d 474 (Fla. 4th DCA 2019). Appellant cannot point to (nor could this Court find, after conducting an independent inquiry) any case in which a Court found that a party had standing to challenge an assignment of a mortgage as a title holder, or as an individual holding a power of attorney. Response at 24.

After reviewing the record and conducting a *de novo* review of the Bankruptcy Court’s legal analysis, I concur with Judge Lopez-Castro’s legal conclusions. Accordingly, it is

ORDERED and ADJUDGED that the Bankruptcy Court’s Order granting Appellee’s Motion to Dismiss is **AFFIRMED**. This appeal is **DISMISSED** with prejudice. The Clerk is directed to **CLOSE** this case. All pending motions, if any, are **DENIED** as moot.

DONE AND ORDERED in Miami, Florida, this 12th day of April, 2025.



HONORABLE PAUL C. HUCK
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

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